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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DAVID D. LEWIS,

9 Plaintiff,

v.

10 BELINDA STEWART, et al.

11 Defendant.

CASE NO. C20-5248 BHS-TLF

ORDER ADOPTING REPORT
AND RECOMMENDATION

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13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkt. 30, and
15 Defendants’ objections to the R&R, Dkt. 31.

16 Plaintiff David Lewis brings suit under 42 U.S.C. § 1983 against Defendants for
17 alleged violations of his First, Eighth, and Fourteenth Amendment rights, and for
18 violating his rights under the Religious Land Use and Institutionalized Persons Act
19 (“RLUIPA”). Dkt. 5. Lewis is incarcerated at Stafford Creek Corrections Center
20 (“SCCC”). He alleges that Defendants violated his rights under the First Amendment and
21 RLUIPA by denying him religious services specific to his Nation of Islam faith and that
22 Defendants violated his First Amendment and Eighth Amendment rights by refusing to

1 allow him to participate in a Ramadan meal program so that he could observe Ramadan.
2 *Id.* at 6–9. Lewis invokes the Fourteenth Amendment’s Equal Protection Clause but does
3 not appear to allege facts in support of that claim. *Id.* at 6.

4 On January 25, 2021, Defendants filed a motion for summary judgment, Dkt. 24,
5 which Judge Fricke construed as a motion for partial summary judgment because it did
6 not address all of Lewis’s claims, *see* Dkt. 30 at 1. Lewis did not respond to Defendants’
7 motion for summary judgment. On April 6, 2021, Judge Fricke issued the instant R&R
8 recommending that the Court grant Defendants’ motion as to Lewis’s First Amendment
9 claims for denial of Ramadan meals and religious programming specific to the Nation of
10 Islam. *Id.* at 15. The R&R further recommends that all claims against Defendants
11 Sinclair, Haynes, Van Ogle, Gilbert, Dahne, and Rothwell be dismissed with prejudice as
12 there are not facts evidencing their personal participation in any violation of Lewis’s
13 constitutional or statutory rights. *Id.* The R&R concluded, however, that summary
14 judgment was not warranted as to Lewis’s Eighth Amendment, Fourteenth Amendment,
15 or RLUIPA claims as Defendants did not move for summary judgment on those claims.
16 *Id.* at 15–16.

17 On April 14, 2021, Defendants filed objections to the R&R, arguing that the Court
18 should hold that Lewis abandoned his RLUIPA and Equal Protection claims by failing to
19 raise them in a response to their motion for summary judgment and that the remaining
20 Defendants—Stewart and Wakeman—are entitled to qualified immunity for Lewis’s
21 Eighth Amendment claim. Dkt. 31. Lewis again did not respond.
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1 The district judge must determine de novo any part of the magistrate judge's
2 disposition that has been properly objected to. The district judge may accept, reject, or
3 modify the recommended disposition; receive further evidence; or return the matter to the
4 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

5 The Court declines to adopt Defendants argument that the it should consider
6 Lewis's RLUIPA and Equal Protection claims abandoned. Defendants did not raise either
7 of these claims in their motion for summary judgment, *see* Dkt. 24 at 10–17 (discussing
8 Lewis's First Amendment claim) and the Court will not deem these claims abandoned
9 simply because Lewis did not respond in opposition to their motion. It would be illogical
10 to deem an argument abandoned when the issue was never raised by Defendants in the
11 first place. Defendants may file a supplemental motion for summary judgment addressing
12 the remainder of Lewis's claims insofar that such a motion is consistent with the briefing
13 schedule of the case, and the Court will consider then the merits of the arguments they
14 raise in objections.

15 The Court having considered the R&R, Defendants' objections, and the remaining
16 record, does hereby find and order as follows:

- 17 (1) The R&R is **ADOPTED**;
- 18 (2) Defendants' motion for summary judgment, Dkt. 24, is **GRANTED**, and
19 Plaintiff's First Amendment claims are **DISMISSED with prejudice**;
- 20 (3) The Clerk shall terminate Defendants Sinclair, Haynes, Van Ogle, Gilbert,
21 Dahne, and Rothwell as parties to this case; and
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1 (4) This matter is re-referred to Judge Fricke for further consideration.

2 Dated this 27th day of May, 2021.

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5 BENJAMIN H. SETTLE
6 United States District Judge
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